IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Bail Appl..No. 6965 of 2007()

CMP.1243/2007 of DISTRICT COURT, KALPETTA

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PETITIONER - ACCUSED (A1):

M.M. BABY, SON OF MANI,
MULLAMPOTTAKKAL HOUSE, MOOKKUTHIKUNNU,
NOOLPUZHA AMSOM DESOM, S. BATHERY TALUK.

BY ADV. SRI.S.EASWARAN
SRI.P.MURALEEDHARAN (IRIMPANAM)

RESPONDENTS: COMPLAINANT:

STATE REPRESENTED BY THE
EXCISE INSPECTOR, SULTHAN BATHERY (REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM).

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6965 of 2007

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Dated this the 19th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered under the Kerala Abkari Act. He was allegedly found to keep in his possession 80 litres of wash. On seeing the Excise party he allegedly abandoned the article and took to his heels. The contemporaneous seizure mahazar as well as the occurrence report clearly show the identity of the petitioner as the miscreant and his contumacious involvement. The alleged incident took place on 2.10.2007. Investigation is in progress. The petitioner has not been arrested so far. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent and that the contraband article was not recovered from his possession. There is a neighbour who indulges in such activities. Without making proper enquiries the petitioner has been unnecessarily arrayed as an accused, it is submitted.

3. The learned Prosecutor opposes the application. He submits that all the relevant inputs point to the complicity of the petitioner. The learned Prosecutor submits that the petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Prosecutor. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must

proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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